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Letter dated 11 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 September 2003 (S/2003/910).

The Counter-Terrorism Committee has received the attached third report from Kuwait submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for this letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established
pursuant to resolution 1373 (2001)
concerning counter-terrorism

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Annex

[Original: Arabic]

Letter dated 10 November 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Sir,

With reference to your letter of 12 August 2003, I have the honour to transmit to you the third report of the State of Kuwait in reply to the questions raised by the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism.

(*Signed*) Mansour Ayyad Sh. A. **Al-Otaibi**
Chargé d'affaires a.i.

Enclosure

Second supplementary report of the State of Kuwait in reply to the questions raised by the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Introduction

Believing in the importance of combating terrorism through joint international action, the State of Kuwait wishes to cooperate fully with the Counter-Terrorism Committee and reply to all of the questions raised.

The State of Kuwait thus has the honour to submit to you its second supplementary report on the suppression of counter-terrorism.

Implementation measures

With regard to article 19 of the Suppression of Money-Laundering Act No. 35 of 2002, referred to on page 5 of the supplementary report, the Counter-Terrorism Committee would be grateful if it could be provided with an outline of the decree issued by the Minister of Finance on the measures and standards required to implement the provisions of this law, in particular those concerned with regulating alternative financial remittance systems such as *hawalah*. In addition, the Counter-Terrorism Committee would be grateful if it could be provided with Kuwait's strategy in regard to the regulation of the informal remittance sector.

The Ministry of Finance has promulgated a number of decrees implementing the above-mentioned Act, as follows:

1. Decree No. 15/2002, promulgated on 14 April 2002, concerning the legal and judicial procedures followed in regard to money-laundering;

2. Decree No. 252/2002, promulgated on 22 September 2002, concerning the directives to be adopted in order to combat money-laundering operations and the financing of terrorism;

3. Decree No. 9/2003, promulgated on 7 June 2003, concerning the requirement for passengers arriving in the country to declare all national or foreign currency, gold ingots or valuables in their possession worth over 3,000 Kuwaiti dinars;

4. Decree No. 10/2003, promulgated on 10 June 2003, establishing the Kuwaiti Financial Investigations Unit in the Central Bank of Kuwait.

In addition, on 22 October 2002, the Central Bank of Kuwait issued a number of directives to domestic banks on the suppression of money-laundering operations and the financing of terrorism. On 4 March 2003, it also issued directives to currency exchange businesses, stipulating that: "The undertaking of foreign remittance transactions shall be restricted to authorized correspondents who are so licensed by the competent official authorities in the countries where such correspondents are located." Consequently, financial remittances in the State of Kuwait must be made through official channels and no financial body subject to oversight by the Central Bank of Kuwait is permitted to make financial remittances through alternative systems such as that of *hawalah*.

The Counter-Terrorism Committee notes that all money boxes, collection boxes and kiosks used to collect donations of whatever kind are prohibited in Kuwait, as indicated on page 4 of the supplementary report. The Committee would be grateful for a further explanation indicating whether the prohibition referred to immediately above is regulated by a licensing system. If the answer to this question is in the affirmative, could the Government of Kuwait outline for the Committee the criteria applied by the Kuwaiti authorities to determine whether such boxes or kiosks can be used or not?

Boxes and kiosks for the collection of donations are prohibited, with the exception of those which are licensed. By administrative decree, a committee was formed in the Ministry of Social Affairs and Labour to inspect activities relating to charitable work. The committee is responsible for the oversight of all charitable bodies and commercial and economic establishments in Kuwait. It records any violations of the law licensing the collection of funds, the Clubs and Public Welfare Associations Act No. 24 of 1962 and their implementing decrees, and refers offenders to the competent judicial authorities after cautioning them to remedy the violations for which they are responsible.

Monetary donations can be collected only by standing payment order (monthly debit) through domestic banks, using the forms intended for that purpose, which must be approved and stamped by the Ministry in order to be valid. Boxes for the collection of monetary donations are operated by means of the approved monthly debit forms. The Ministry also conducted a full and thorough inspection of all kiosks, many of which it removed, permitting only a few to pursue their activity of collecting donations in accordance with the following rules:

1. Any kiosk used to collect donations must belong to a public welfare association involved in charitable work and declared by the Ministry in accordance with the provisions of Act No. 24 of 1962;

2. Monetary donations may be collected only by means of the standing payment order form approved by the Ministry and all other means of collecting donations shall be prohibited;

3. No kiosks may be set up for the collection of donations in kind, such as clothing, electrical equipment, furniture and so on;

4. Kiosks licensed by the Ministry shall be required to post in a visible position a notice from the Ministry stating the number of the licence, its date of issue and its period of validity;

5. Employees staffing a kiosk must have a valid permit of work for the association to which the kiosk belongs;

6. No monetary donations may be spent outside Kuwait without authorization from the Ministry, which shall ascertain the purpose of the spending in order to ensure that the funds are not diverted to suspect parties.

If a violation is detected at the time of the Ministry's physical inspection of such kiosks, the association to which the kiosk belongs is cautioned in writing to remedy the violation, failing which the Ministry will administratively remove the kiosk, taking the necessary legal action in that regard by withdrawing the kiosk licence and imposing the penalties stipulated in Act No. 24 of 1962. In addition, the matter is referred to the General Department of Investigations at the Ministry of the

Interior in accordance with the seriousness of the violation and the failure of the offender to respond to the cautions issued by the Ministry.

In that connection, the Ministry has produced a number of inspection forms and an application form for the collection of monetary donations, which all charitable associations must complete in accurate detail. The form must be signed by the officer-in-charge of the association and returned to the Ministry for its consideration and opinion.

The Ministry of Social Affairs and Labour also coordinates with the Ministry of Information concerning charitable bodies which declare the wish to collect donations, since these must first obtain the approval of the Ministry. Within the Ministry, the Department of Charitable Associations and Institutions has assumed the task of following up the activities of the charitable associations operating within the country and obtaining information on the assistance which they provide. It also prepares all the periodic reports on the subject of terrorism. Moreover, it has drawn up a comprehensive plan of action covering the steps taken by the Department to strengthen the oversight, monitoring and follow-up of all charitable work and activities undertaken in Kuwait in order to ensure compliance with the laws and implementing decrees on the subject and prevent the diversion of funds to suspect parties which may use them in terrorist operations.

Effective implementation of subparagraph 1 (b) of resolution 1373 (2001) requires a State to have in place provisions specifically criminalizing the wilful provision or collection, by any means, directly or indirectly, of funds by its nationals or in its territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds should actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No transfer of funds from one country to another takes place; or**
- **The funds are legal in origin.**

The current provisions of the law of Kuwait do not appear to meet the above-mentioned requirements adequately. The Counter-Terrorism Committee would welcome a progress report and an outline of the amendments foreseen by Kuwait with a view to meeting those requirements or, in their absence, an indication of the action which Kuwait intends taking in that regard.

Articles 48 and 52 of the Kuwaiti Penal Code No. 16 of 1960 make it clear that acts of financing terrorism are indirectly criminalized if they involve incitement or arrangement to perpetrate any terrorist offence, or assistance in the perpetration thereof, insofar as any person who commits such acts is regarded as an accomplice in the offence before it is committed and consequently receives the same punishment as the main offender.

The Office of the Attorney-General consequently takes the view that the activity of collecting funds with the intention of financing terrorism is, in all cases, subject to the criminalizing provisions contained in the aforementioned Kuwaiti Penal Code, as such activity is also punishable under the description of an arrangement, even if the offence does not take place, in accordance with article 56 of the Code, which stipulates that:

> "If two or more persons arrange to commit an offence, whether serious or less serious, and make preparations to do so in a manner which gives no reason to expect their abandonment of the arrangement, they shall each be deemed responsible for a criminal arrangement, even if the offence which is the subject of the arrangement did not take place.
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> "Criminal arrangement shall be punished by a term of imprisonment of up to five years if the offence which is the subject of the arrangement is punishable by the death penalty or life imprisonment. If, however, the offence is punishable by a lesser penalty, the penalty for the criminal arrangement shall be a term of imprisonment of up to one third of that prescribed for the offence or a fine in an amount of up to one third of that prescribed for the offence.
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> "Any person who promptly reports the existence of a criminal arrangement and the identity of the accomplices therein to the public authorities before they undertake an investigation and search and before any offence takes place shall be exempt from punishment. If the report is made after the investigation and search, it must lead to the arrest of the others involved in the arrangement."

The Counter-Terrorism Committee notes the policies adopted by Kuwait to regulate charitable work, including the establishment of the Supreme Committee to act as a permanent authority for the control of charitable work, as indicated in pages 3 and 4 of the supplementary report. Could the Government of Kuwait provide the Counter-Terrorism Committee with an outline of the regulations and by-laws used by the various competent authorities in Kuwait to implement these policies effectively?

There are several laws and by-laws which Kuwait observes in regulating charitable work, specifically:

1. The law licensing the collection of funds for public purposes;

2. The Clubs and Public Welfare Associations Act No. 24 of 1962, as amended;

3. Ordinance No. 101 of 1995 of the Minister of Social Affairs and Labour promulgating the regulations on the collection of donations.

Is there a special law on mutual assistance in criminal matters in Kuwait?

We would point out that the State of Kuwait has no special law on mutual assistance in criminal matters. It has, however, introduced a number of arrangements and procedures with a view to exchanging information and requesting assistance from States, special committees and relevant organizations on counter-terrorism measures. Domestic arrangements and procedures concerning the exchange of information are also in place. Mutual assistance in criminal matters, in fact, takes place between the State of Kuwait and all friendly States, either on the basis of bilateral, regional or international agreements for cooperation and mutual assistance

in judicial and criminal matters, or on the basis of reciprocity in accordance with the customary judicial practice.

Could Kuwait outline to the Counter-Terrorism Committee the relevant legal provisions under its domestic law concerned with preventing the counterfeiting, forgery or fraudulent use of identity papers and travel documents?

The Kuwaiti Penal Code No. 16 of 1960, as amended, criminalizes the act of forging documents of all types, among them official documents, which naturally include personal identity papers and travel documents. The forgery of official documents is regarded as a punishable offence for which the said Code imposes the heavy penalty of a term of imprisonment of up to seven years, to which may be added a fine. All of the above is stipulated in articles 257, 258, 259, 260 and 261 of the aforementioned Penal Code.

The Counter-Terrorism Committee has noted the inter-agency cooperation and exchange of information among the competent national authorities in Kuwait as referred to in pages 12-13 of the supplementary report. The Counter-Terrorism Committee would appreciate receiving information concerning similar mechanisms utilized by Kuwait in its relations with other States dealing with the exchange of operational information; especially regarding actions or movement of terrorist persons or networks, forged or falsified travel documents, and traffic in firearms or explosives.

The State of Kuwait cooperates with other States in exchanging the said information, either through the agreements which it has concluded with such States or through arrangement and direct joint coordination. It also cooperates with international organizations, such as the International Criminal Police Organization (Interpol), the Council of Arab Ministers of Interior, which has a liaison division in every Arab State, and the States of the Cooperation Council of the Arab States of the Gulf.

Other than the mechanisms established under the bilateral treaties referred to in page 6 of the first report and page 9 of the supplementary report, has Kuwait established any cooperative mechanisms with other States that are applicable in Kuwait and whose purpose is to provide other States with early warning of anticipated terrorist activity?

There is cooperation in this field, whether within the scope of bilateral agreements with a number of countries, through regional cooperation within the scope of the Cooperation Council of the Arab States of the Gulf or within the Arab scope through the Council of Arab Ministers of Interior.

The Counter-Terrorism Committee would welcome receiving a progress report on the bilateral cooperation treaties with other States, to which Kuwait refers in page 9 of its supplementary report but has still not ratified.

With regard to bilateral agreements relating to cooperation on security, the bilateral agreement concluded between the State of Kuwait and the Republic of Hungary on cooperation in the field of combating organized crime was promulgated pursuant to Decree No. 292/1998 of 13 December 1998. The constitutional procedures in regard to the two other agreements between the State of Kuwait and the Islamic Republic of Iran and the Republic of Bulgaria are currently under way.

The State of Kuwait has also signed agreements on legal and judicial cooperation with Tunisia, Egypt, Morocco, Bulgaria and Turkey, and the necessary constitutional procedures for ratification of the agreement on legal and judicial cooperation with the Syrian Arab Republic are under way.

The Counter-Terrorism Committee would welcome a progress report on parliamentary measures taken by Kuwait with a view to acceding to the remaining international instruments related to the prevention and suppression of terrorism, including the International Convention for the Suppression of the Financing of Terrorism, to which Kuwait is not as yet a party.

The State of Kuwait has ratified the following international conventions:

1. The Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, pursuant to Act No. 15 (2003) of 22 April 2003;

2. The Protocol on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, pursuant to Act No. 16 (2003) of 22 April 2003.

The Arab Convention on the Suppression of Terrorism, the Convention on the Physical Protection of Nuclear Materials and the International Convention for the Suppression of Terrorist Bombings remain on the agenda of the Foreign Affairs Committee of the National Assembly.

In regard to the International Convention for the Suppression of the Financing of Terrorism of 1998, it is still before the Council of Ministers, being under consideration in ministerial committees.

In regard to domestic laws, the State of Kuwait promulgated the Suppression of Money-Laundering Act No. 35 of 2002 and the Central Bank of Kuwait issued a decision by the Governor of the Bank on 23 June 2003 concerning the establishment of the Kuwaiti Financial Investigation Unit. A decision was also issued by the director of the Kuwaiti Securities Market concerning the rules on combating money-laundering operations and the financing of terrorism.

Could Kuwait describe to the Counter-Terrorism Committee the provisions which it has introduced into its domestic law, which correspond to the offences provided for in the international instruments against terrorism to which Kuwait is already a party? In particular, the Counter-Terrorism Committee would be interested in knowing whether those domestic provisions correspond to the prohibition of the financing, planning, facilitating and/or committing of terrorist acts, as provided for under any other international instruments to which Kuwait is already a party?

The Kuwaiti Penal Code No. 16 of 1960, as amended, contains an article which can be considered to fall within the scope of combating terrorist offences, namely article 170, which punishes "any person who gives a misleading signal or issues an announcement, instruction or warning which misguides a ship or an aircraft with intent to harm persons or things, or to damage means of conveyance, by a term of imprisonment of up to five years and a fine. The punishment shall be increased to a term of imprisonment of up to 15 years and a fine if such act leads to the serious injury of one or more persons. If it results in a person's death, the punishment shall be the death penalty or life imprisonment."

Act No. 6 of 1994 on offences relating to the safety of aircraft and aviation was also promulgated. Its provisions are in keeping with those of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, to which the State of Kuwait acceded pursuant to Decree-Law No. 64 of 1979.

Could Kuwait outline the statutory reasons for refusing requests for extradition? Are "political offences" considered a reason for refusing extradition under the domestic law of Kuwait? Could Kuwait provide the Counter-Terrorism Committee with the criteria which it uses to determine whether an offence constitutes a political offence under its domestic law? Are any of the offences mentioned under subparagraph 2 (c) of resolution 1373 (2001) considered as political offences under the domestic laws of Kuwait? If not, the Counter-Terrorism Committee would be grateful to be provided with an outline of the relevant domestic provisions.

We should like to state that no special law covering all the procedural and other rules concerning the extradition of criminals has been promulgated in the State of Kuwait. In that connection, however, efforts have been made to comply with the provisions contained in the various agreements on judicial and legal cooperation which the State of Kuwait has concluded with other friendly States.

In accordance with the provisions of those agreements, the State of Kuwait is not permitted to extradite in certain cases, including those involving political offences. The criterion for what are regarded as political offences is subject to the discretion of the requested State. In that regard, however, the rule is that terrorist offences are not regarded as political offences which bar extradition, as explicitly provided for in the cooperation agreements concluded with the Arab Republic of Egypt in 1977 (article 39), Tunisia in 1977 (article 39), Bulgaria in 1989 (article 37) and Turkey in 1998 (article 33).

As for the cases in which offenders may not be generally extradited in accordance with the overall provisions of cooperation agreements and the customary judicial practice of reciprocity, they are restricted to the following:

1. If the person to be extradited is a citizen of the requested State, in which regard the nationality at the time of perpetration of the offence is taken into consideration;

2. If the offence was committed in the territory of the requested State;

3. If the offence occurred outside the territory of the requesting State by a non-national of that State and the law of the requested State does not permit the bringing of charges for that offence;

4. If, at the time of the extradition request, legal proceedings have ended or the penalty has extinguished by prescription in accordance with the law of either State or a pardon in that regard has been issued in either State;

5. If the offence for which extradition is requested is confined to breach of military duty;

6. If a final verdict on the offence has been delivered in the requested State;

7. If the offence for which extradition is requested is regarded by the requested State as a political offence and is connected with a political offence;

In applying the provisions of these agreements, the following are not regarded as political offences:

(a) Offences involving an attack on the president of either State or on his wife, forebears or descendants;

(b) Offences involving an attack on the Crown Prince of the State of Kuwait or on the crown prince, first minister or vice-president of the other States;

(c) Terrorist offences as defined by the requested State;

(d) Offences of wilful killing or attempted wilful killing and offences of armed burglary and robbery with force.

The Counter-Terrorism Committee would be grateful to receive the organizational chart of Kuwait's administrative police machinery including the immigration office, referred to in page 15 of its supplementary report.

The State of Kuwait has nothing known as the Kuwaiti administrative police; the official name for the police machinery in Kuwait is the police force. At the request of the Committee, the organizational chart of the Immigration Office is annexed hereto.

The Counter-Terrorism Committee is aware that Kuwait may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The Counter-Terrorism Committee would be content to receive a copy of any such report or questionnaire as part of Kuwait's response to these matters, as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373 (2001).

The Ministry of Finance of the State of Kuwait, in conjunction with the competent domestic authorities, has completed and returned the questionnaire of the Financial Action Task Force on Money-Laundering (FATF).

Assistance and guidance

The Counter-Terrorism Committee is eager to facilitate the provision of assistance and advice in connection with the implementation of resolution 1373 (2001). The Committee would encourage Kuwait to let it know if there are areas in which assistance or advice might be of benefit to Kuwait in its implementation of resolution 1373 (2001) or of any areas in which Kuwait might be in a position to offer assistance or advice to other States on the implementation of resolution 1373 (2001).

Pursuant to the Suppression of Money-Laundering Act No. 35/2005, the Ministry of Finance is ready to use its expertise in this field to assist States which are still in the process of preparing measures and procedures for a law on money-laundering.

At this stage of its work, the Counter-Terrorism Committee will focus on requests for assistance that relate to "Stage A" matters. However, the assistance to be provided by one State to another on any aspect of the implementation of resolution 1373 (2001) is a matter for agreement between them. The Counter-

Terrorism Committee would be grateful to be kept informed of any such arrangements and on their outcome.

In regard to arrangements and implementing measures, which reflect the concern and efforts of the Kuwaiti Government in preparing and training human resources to apply the law on money-laundering, a number of training programmes and seminars on the suppression of money-laundering operations have been prepared and organized for those working in the relevant ministries and agencies of the State. Attention has also been devoted to profiting from the technical assistance provided by the International Monetary Fund and the World Bank in connection with technological matters, legislative and legal issues and training programmes and courses, namely:

1. A course on the suppression of money-laundering operations, held on 25 May 2002, for employees of banks and currency exchange businesses;

2. A course for the team which tracks wealth and money-laundering operations, held in the Arab Republic of Egypt during the period 13-22 April 2002 and attended by eight officers;

3. During the month of April 2002, the Institute for Legal and Judicial Studies organized an eight-hour course on the Suppression of Money-Laundering Act No. 35/2002 for representatives of the Office of the Attorney-General;

4. A special course on the suppression of money-laundering operations and the financing of terrorism was organized by the Ministry of Finance during the period 26-28 August 2000 with the aim of thoroughly informing the concerned employees of the latest developments in connection with moneylaundering operations and the financing of terrorism, familiarizing them with countermeasures and strengthening the capabilities of employees in the field of counter-operations. A number of the competent authorities in the concerned ministries and government departments participated in the course, together with representatives of domestic banks;

5. Several representatives of the Office of the Attorney-General dealing with public funds and narcotic drugs participated in a course on the rules governing the suppression of narcotics and money-laundering, held in Riyadh from 31 August to 12 September 2002 and organized by the Nayef Arab Academy for Security Sciences in conjunction with the United Nations Office on Drugs and Crime;

6. The General Administration of Customs, in conjunction with the United States Bureau of Customs and Border Protection and the United States Department of Justice, organized a seminar on money-laundering during the period 1-3 February 2003 in the State of Kuwait, which was attended by 16 representative bodies from the public and private sectors.